



State of Rhode Island and Providence Plantations

State House
Providence, Rhode Island 02903-1196
401-222-2080

Donald L. Carcieri
Governor

November 9, 2009

TO THE HONORABLE, THE SPEAKER OF THE HOUSE OF REPRESENTATIVES:

In accordance with the provisions of Section 14, Article IX of the Constitution of the State of Rhode Island and Section 43-1-4 of the Rhode Island General Laws, I transmit, with my disapproval, 2009 H 5134, Substitute A "An Act Relating to Criminal Procedure – Arrest."

This bill has a number of provisions that could make the prosecution of many felony cases much more difficult, with the result that perpetrators of many types of serious crimes may not be held accountable for their actions. The bill has the following measures which are troublesome:

First, the bill requires recording of interrogations in their entirety. This may not be feasible or practical since police contact with individuals can start under hectic conditions outside of a police station, in a police car, or during processing. Important confessions in these settings could be suppressed.

Second, the bill requires that all voices on a recording that are material to an investigation be identified. Yet a police officer may enter a room and ask the defendant a question without identifying himself, and the state would be precluded from using an important statement from the defendant, despite the fact that the defendant was read his rights and made an obviously incriminating statement.

Third, the bill would apply to a sweeping scope of serious felonies where the potential sentence is life imprisonment such as burglary and certain drug offenses. An incremental approach would be more practical.

Fourth, the bill does not adequately address the issues of interrogation of multiple suspects at a time. If there are 4-5 suspects that need to be interrogated and time is of the essence, but there is not a sufficient number of recording devices, the interrogations would need to be delayed with potentially adverse consequences.

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Some of the enumerated exceptions addressing when an interrogation need not be recorded are troublesome and potentially ineffectual. The bill would allow evidence from a non-recorded custodial interrogation to be admissible if recording equipment was not "reasonably available." This is vague and ambiguous language. One could envision time-consuming evidentiary hearings to determine the meaning of this term.

The bill would allow non-electronically recorded confessions to be admitted when there was a mechanical malfunction. One envisions more evidentiary hearings on whether the machine could truly be considered non-functional.

I close by noting Massachusetts and Connecticut do not have such strict laws regarding the recording of custodial interrogations. Massachusetts law states that if a confession is not completely recorded, the defendant can ask for a jury instruction telling jurors to beware of the quality and reliability of the police testimony about the confession. This appears to be a more desirable balancing of the interests involved than the proposed bill, which is too far-reaching and constricting.

For these reasons, I disapprove of this legislation and respectfully urge you support of this veto.

Sincerely,

A handwritten signature in black ink, appearing to read "Donald L. Carcieri", with a long, sweeping horizontal line extending to the right.

Donald L. Carcieri
Governor